

RESOLUTION NO. 85-97

RESOLUTION APPROVING AGREEMENT WITH
SOUTHERN PACIFIC TRANSPORTATION COMPANY
UNDERGROUND UTILITIES CROSSING (CALIFORNIA STREET)

RESOLVED, that the City Council of the City of Lodi does hereby approve an Agreement with the Southern Pacific Transportation Company for the construction and maintenance of a sanitary sewer under the railroad crossing at California Street (L-203744/D-63760), a copy of which is attached hereto, identified as Exhibit "A" and thereby made a part hereof.

BE IT FURTHER RESOLVED, that the City Council of the City of Lodi hereby authorizes the Mayor and City Clerk to execute the subject Agreement on behalf of the City.

Dated: August 7, 1985

I hereby certify that Resolution No. 85-97 was passed and adopted by the Lodi City Council at its Regular Meeting of August 7, 1985 by the following vote:

AYES: Council Members - Olson, Pinkerton, Reid, Snider, and Hinchman (Mayor)

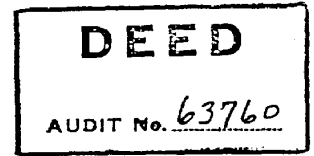
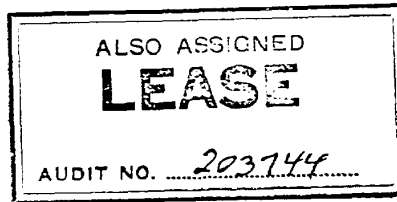
NOES: Council Members - None

ABSENT: Council Members - None

ATTEST:


ALICE M. REIMCHE
City Clerk

AND WHEN RECORDED MAIL TO

Name
Street
Address
City
State
Zip

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELMIS: DE-104.08-X(N)

THIS INDENTURE, made this 15 day of July, 1985, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, herein termed "Railroad," and CITY OF LODI, a municipal corporation of the State of California, address: P. O. Box 320, Lodi, California 95241, herein termed "Grantee";

WITNESSETH:

1. Railroad hereby grants to Grantee, subject to the reservations, covenants and conditions herein contained, the right to construct, reconstruct, maintain and operate a twelve (12) inch sanitary sewer pipeline, hereinafter termed "structure," in, upon, along, across and beneath the property and tracks of Railroad, at or near Lodi, in the County of San Joaquin, State of California, crossing the center line of said tracks at Engineer's Station 28+00, Mile Post 104.08, in the location shown on the print of Railroad's Drawing 6076 revised March 12, 1985, attached and made a part hereof.

Said structure shall be installed in accordance with minimum standards of Form C. S. 1741, also attached and made a part hereof; provided that such standards are not in conflict with nor less than those required by law.

1-a. As a part consideration for the rights herein granted, Grantee shall pay to Railroad the sum of Three Hundred Seventy-five Dollars (\$375).

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2. Project markers in form and size satisfactory to Railroad, identifying the facility and its owner, will be installed and constantly maintained by and at the expense of Grantee at Railroad property lines or such locations as Railroad shall approve. Such markers shall be relocated or removed upon request of Railroad without expense to Railroad.

Absence of markers does not constitute a warranty by Railroad of no subsurface installations.

3. This grant is made subject and subordinate to the prior and continuing right and obligation of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier, and there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property.

4. This grant is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

5. The rights herein granted to Grantee shall lapse and become void if the construction of said structure upon said property is not commenced within one (1) year from the date first herein written.

6. Grantee shall bear the entire cost and expense of constructing, reconstructing and maintaining said structure upon said property. Grantee agrees that all work upon or in connection with said structure shall be done at such times and in such manner as not to interfere in any way whatsoever with the operations of Railroad. The plans for and the construction or reconstruction of said structure shall be subject to the approval of Railroad.

Grantee agrees to reimburse Railroad for the cost and expense to Railroad of furnishing any materials or performing any labor in connection with the construction, reconstruction, maintenance and removal of said structure, including, but not limited to, the installation and removal of such falsework and other protection beneath or along Railroad's tracks, and the furnishing of such watchmen, flagmen and inspectors as Railroad deems necessary.

7. In the event Railroad shall at any time so require, Grantee, at Grantee's expense, shall reconstruct, alter, relocate said structure or otherwise improve said structure upon receipt of written notice from Railroad so to do.

8. Grantee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of Railroad.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the premises covered hereunder as a result of Grantee's use, presence, operations or exercise of the rights granted hereunder, Grantee shall, at its expense, be obligated to clean all property affected thereby, whether owned or controlled by Railroad, or any third person, to the satisfaction of Railroad (insofar as the property owned or controlled by Railroad is concerned) and any governmental body having jurisdiction in the matter. Railroad may, at its option, clean Railroad's premises; if Railroad elects to do so, Grantee shall pay Railroad the cost of such cleanup promptly upon the receipt of a bill therefor.

Grantee agrees to investigate, release, indemnify and defend Railroad from and against all liability, cost and expense (including, without limitation, any fines, penalties, judgments, litigation costs and attorney fees) incurred by Railroad as a result of Grantee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during the time this indenture is in effect or thereafter, unless such liability, cost or expense is proximately caused solely and exclusively by the active negligence of Railroad, its officers, agents or employees.

9. As part consideration, Grantee agrees to pay Railroad an amount equal to any and all assessments which may be levied by order of any authorized lawful body against the property of Railroad (and which may have been paid by Railroad) to defray any part of the cost or expense incurred in connection with the construction of said structure upon said property commenced within one (1) year from the date first herein written.

10. Grantee, its agents and employees subject to provisions hereof, shall have the privilege of entry on said property for the purpose of constructing, reconstructing, maintaining and making necessary repairs to said structure. Grantee agrees to give Railroad five (5) days' written notice prior to commencement of any work on said structure, except emergency repairs, in which event Grantee shall notify Railroad's authorized representative by phone. Grantee agrees to keep said property and said structure in good and safe condition, free from waste, so far as affected by Grantee's operations, to the satisfaction of Railroad. If Grantee fails to

keep said property and said structure in a good and safe condition, free from waste, then Railroad may perform the necessary work at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

11. In the event any work upon or in connection with said structure or its appurtenances, to be done upon or adjacent to the tracks and property of Railroad, should be let to a contractor by Grantee, such work shall not be begun until such contractor shall have first entered into an agreement with Railroad, satisfactory to Railroad, and indemnifying Railroad from and against all claims, liability, cost and expense growing out of the performance of the work to be done by such contractor.

12. Insofar as it lawfully may, Grantee agrees to investigate, release, defend and indemnify Railroad, its officers, employees, agents, successors and assigns, from all claims, liability, cost and expense howsoever same may be caused, including reasonable attorney fees, for loss of or damage to property and for injuries to or death of persons arising out of the construction, reconstruction, maintenance, presence, use or removal of said structure, regardless of any negligence or alleged negligence, active, passive or otherwise, on the part of Railroad employees.

The word "Railroad" as used in this section shall be construed to include, in addition to Railroad, the successors, assigns and affiliated companies of Railroad and any other railroad company that may be lawfully operating upon and over the tracks crossing or adjacent to said structure, and the officers and employees thereof.

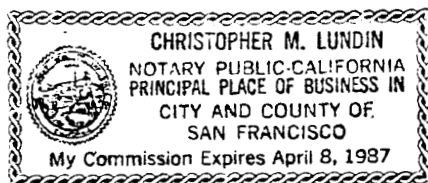
13. Should Grantee, its successors or assigns, at any time abandon the use of said property, or any part thereof, or fail at any time to use the same for the purpose contemplated herein for a continuous period of one (1) year, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and Railroad shall at once have the right, in addition to, but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property or the part thereof the use of which is so discontinued or abandoned.

Upon termination of the rights and privileges hereby granted, Grantee, at its own cost and expense, agrees to remove said structure from said property and restore said property as nearly as practicable to the same state and condition in which it existed prior to the construction of said structure. Should Grantee in such event fail, neglect or refuse to remove said structure and restore said property, such removal and restoration may be performed by Railroad, at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand, or Railroad may, at its option, assume ownership of said structure.

14. The parties intend that the promises and obligations of this indenture shall constitute covenants running with the land so as to bind and benefit their respective successors and assigns.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO }

ON THIS 1st DAY OF July, 1985, BEFORE ME, CHRISTOPHER M LUNDIN (ONE MARKET PLAZA), A NOTARY PUBLIC IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, PERSONALLY APPEARED W. E. FOWLER, PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT, AS MANAGER-MISCELLANEOUS CONTRACTS ON BEHALF OF THE CORPORATION THEREIN NAMED AND ACKNOWLEDGED TO ME THAT THE CORPORATION EXECUTED IT.



Christopher M. Lundin

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

By W. E. Fowler
(Title) Manager - Miscellaneous Contracts

Attest: [Signature]
Secretary

CITY OF LODI
By David [Signature]
Mayor

By [Signature]
Clerk

COUNTERSIGNED
E. L. JOHNSON
Vice Pres. & Controller
By *[Signature]*
SPCo. # 120 7-3-85

7
FORM APPROVED
R. J. Lathrop
CONTRACT COUNSEL

Mr. L. F. Furlow:

[Handwritten mark]
D. CABRERA Rm. 665

Attention to ~~Mrs. A. J. Joesten - 201 Mission St. - 3rd Floor:~~

Attached C.S. 2104 for Station LODI

Approved for Engineering Details, per Drawing 6076

Dated _____; Revised Date 3-12-85

Corporate: ☒ Southern Pacific Transportation Co.

() Northwestern Pacific Railroad Co.

() Petaluma and Santa Rosa Railroad Co.

() St. Louis Southwestern Railway Co.

()

Attest as to Corporate Owner:

David Farmer
For Valuation Engineer

H. B. *[Signature]* BERKSHIRE

Applicant CITY OF LODI
Address BOX 320
City LODI State CAL Zip 95241
Phone (209) 334-5634 Contact person ()
Facility Sanitary Sewer
Purpose _____

1. Materials and Installation per S.P. drawing no. CE. _____ CS. 1741
2. Angle of crossing with tracks 90
3. Underground signal or communication line involved - Yes _____ No ☒
4. Pressure in pipe NO p.s.i.
5. Distance from bottom of tie to top of casing 5 ft
6. If less than 3'-0". Why? _____
7. If pipe carries flammable substances and has casing
Number and location of vents _____ carrier pipe _____
8. Pipe Material: Casing STEEL Carrier PVC or VCP
9. Inside Diameter: Casing 18" Carrier 12"
10. Wall thickness: Casing _____ gage or 1/4" inches
Carrier _____ gage or _____ inches
11. Length of casing 38
12. If pipe is reinforced conc ASTM class, designation _____
13. If pipe is cast iron AWWA class _____
14. Method of installation under tracks DRY BORING
15. Dry Boring ☒ Jacking _____ Open Cut _____
16. Where S.P. pipelines are involved utility crossing shall not be less than 2'-0" below S.P. pipelines.
17. Project markers shall be installed and maintained by applicant. Recommend a plastic buried utility tape indicating type of utility be installed not less than 12" above the underground installation.
18. Carrier pipe for flammable substances shall not be made of plastic unless completely encased across entire railroad R.O.W.

Note:

Zipped information to be filled in by Railroad.